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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Concluding observations on the second periodic report of Mongolia

Addendum

Information received from Mongolia on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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1. Mongolia is submitting the follow-up information in accordance with the Recommendations CAT/C/MNG/CO/2 Article 41 adopted upon examination of the second Report of Mongolia on implementation of the Convention during 58th session of the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I. Fundamental legal safeguard

2. In accordance with Article 1 and 9 of CAT/C/MNG/CO/1, below are issues contained in paragraph 12 of the concluding observations adopted by the Committee after the presentation of the second Report of Mongolia (CAT/C/MNG/2).

12. The State party should take effective measures to guarantee that all detained persons are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards, including ceasing carrying out arrests without a legal arrest warrant. The safeguards for detained persons should also include: sub-paragraphs (a)–(d)

(a) To be informed about the charges against them and about all their legal rights, both orally and in writing

3. The Offence Procedure Code (hereinafter 'OPC') and the Criminal Procedure Code (hereinafter 'CCP') that entered into force July 1, 2017, provide regulations on being informed about the charges against them.

4. In the Article 5.2, paragraph 5 of the Offence Procedure Code states "If a person is detained on grounds other than those specified in Article 1.1, he or she will notify either an adult family member, relative or lawyer; or any other person of their own choice of their detention and the location within eight hours after apprehension".

5. The CCP Article 7.3 includes the regulation "To be informed about the charges against them." Paragraph 1 of this Article stipulates "The accused has a right to know for what offence he/she is accused of; and paragraph 2 stipulates "The accused has a right to be presented with decree to prosecute as the accused and with decree on measures of restraint have been taken" In addition, the Article 31.3 on Presenting Decree to Initiate the criminal case and to prosecute as the accused states "The suspect, after being presented with decree to initiate the criminal case and to prosecute as the accused, shall be explained the rights in Chapter Seven, reflect in the records and sign it".

6. According to paragraph 1 of Article 31.6, in case the suspect is arrested before being presented with court order, an investigator shall immediately present the charge he/she is suspected of, the right to a legal counsel, advise that actions and words during arrest will be used as evidence and inform that if suspect does not comply with lawful requirements coercion measures provided by Law will be applied.

(b) To have prompt access to a lawyer from the very outset of deprivation of liberty to guarantee the presence of lawyers in person, including during investigation interviews, and to ensure that free legal assistance is promptly facilitated for insolvent persons

7. Issues of free legal assistance and presence of lawyers in person during investigation interviews are regulated by the Law on Legal Assistance to Insolvent Defendants (adopted on July 5, 2013), the OPC and the CCP adopted on May 18, 2017.

8. In addition to principles of a lawyer, the Article on the Principles of legal aid (Art. 4 par. 4.1.1, 4.1.2 and 4.1.3) of the Law on Legal Assistance to Insolvent Defendants legalizes principles of providing legal assistance "respect for human rights and freedom, being prompt, consistent and keeping confidentiality." Also, paragraphs 6.1 and 6.2 of Article 6 respectively state "Receiver of free legal assistance shall be insolvent defendant" and "In accordance with paragraph 6.1 of the Law, insolvent suspect, defendant and convict shall be entitled to legal assistance".

9. Paragraph 2 of Article 3.3 of the OPC states "Offender and victim can get a lawyer at any time during the regulatory offence procedure. As noted in paragraph 3 of the Article "Lawyer's involvement in regulatory offence procedure defined by the request from the party that is in need of legal assistance".

10. According to paragraph 1.2 of Article 31.6, in case the suspect is arrested before being presented with court order, an Investigator shall immediately inform about the right to a legal assistance." Paragraph 1 of Article 1.14 states that "Person or legal entity whose rights or legitimate interests have been violated has a right to a legal counsel, to defend him/herself, and request for legal assistance." In Paragraph 2 of this Article stated "In accordance to the Law, person or legal entity shall be provided with opportunity, condition and time to receive legal assistance, defend him/herself or to have a legal counsel." Furthermore, paragraph 1 of Article 35.6 notes "The chair of the judicial session shall explain to the defendant, victim, civil plaintiff, civil defendant, their representatives and the experts their rights." According to Paragraph 2 of the Article "To be inquired whether defendant and victim's rights to a legal counsel and receiving legal assistance were fulfilled".

11. Moreover, Article 5.1 paragraph 1 states "Defense counsel is involved in criminal procedure to protect rights and legal interests of and render legal assistance to suspect, accused, defendant, convict, victim, civil plaintiff, and civil defendant." Paragraph 5 includes "The defense counsel shall not have the right to withdraw from the defense or legal assistance responsibility without a valid reason." Also, it is reflected:

- In paragraph 1 of Article 7.6 "Defendant has a right to have an individual meeting and have a free verbal or written communication with his/her defense counsel";
- In paragraph 3 "In criminal procedure court, state prosecution and investigator shall provide the opportunity to defendant to self-defend or have a defense counsel".

(c) To notify a family member or any other person of their own choice of their detention immediately after apprehension

12. Regulation in connection with informing of one's detention was regulated by the OPC and the CCP adopted on May 18, 2017.

13. In the Article 5.2, paragraph 5 of the OPC states "If a person is detained on grounds other than those specified in Article 1.14, he or she will notify an adult family member, relative or lawyer; or any other person of their own choice of their detention and the location within eight hours after apprehension." In paragraph 2 of Article 6.3 states "In case a person who committed a crime appearing to confess, an authorized official shall inform about the right to refuse to give testimony against family members, parents, children, relatives, and the right to self-defence or receive a legal assistance" (See paragraph 4 of the report).

14. Article 31.6, paragraph 5 states "Investigator shall notify about arrest of the suspect within 6 hours a member of a suspect's family who is over 18 year or defence counsel. If person being arrested is a foreign citizen, the Embassy or Diplomatic representative office of that person's country;" Article 18.6, paragraph 4 "Information on arrest or confinement of a minor (suspect) shall be delivered to his/her parents, other legal representatives or defence counsel within 6 hours;" and Article 14.13, paragraph 10.1 says "the decision to confine under guard shall be presented within 2 hours to a member of a suspect's family who is over 18 year or defence counsel. If person being arrested is a foreign citizen, the Embassy or Diplomatic representative office of that person's country, in absence of such representative office notify Central State Administrative Organ in charge of foreign relations".

(d) To receive visits without conditions, including without attempts to force confessions by making family visits conditional thereon

15. The issue of meeting with family members without specific conditions is governed by the Law on Enforcing Decisions on Arrest and Detention of Suspects and Accused, adopted on July 01, 1999.

16. Article 19.2 of the present law states "The detainee may meet with the consent of the competent person who made the decision to detain or with the written consent of his / her senior management officer".

II. Impunity

17. Below are follow-up information mentioned in paragraph 16 of the concluding observations adopted by the Committee after the presentation of the second Report of Mongolia (CAT/C/MNG/2) in accordance with Article 1 and 9 of CAT/C/MNG/CO/1.

(a) Ensure that all reports of torture and ill-treatment by public officials, including the police, are investigated promptly, effectively and impartially by an independent mechanism, with no institutional or hierarchical connection between the investigators and the alleged perpetrators

18. Article 6.1 of the CCP provides regulation on investigation bodies; and paragraph 4 of the mentioned Article states "The prosecutor shall establish jurisdiction of inquiry or investigation in the offense committed by the intelligence, police and anti-corruption officers." It describes that prosecutor has a power to change the jurisdiction of the case for the purpose of intelligence, police and anti-corruption authorities do not carry out inquiry or investigation into the offense committed by its employee. Torture offenses shall also apply.

19. The Anti-Corruption Agency shall provide an investigation of a case related to and criminal offenses of a police officers under information given to and/or complains made on according to the Rule A/67 "Determination of a jurisdiction to investigate complaints, information, criminal cases and prosecution" by the State General Prosecutor dated on dated June 30, 2017. It became an independent mechanism for torture and cruel treatment by the police have been checked by the Independent Authority against Corruption of Mongolia. In other words, it established a legal basis for stopping the suspicion by citizens who have doubt in criminal justice system.

(b) Ensure that all persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed

20. Regulations related to the enforcement of Presumption of innocence principle throughout the investigation were reflected in the CCP. Also, regulation of temporary dismissal of all persons involved in torture and crimes related to torture is reflected in a revised version of the Law on Police Service (adopted on September 9, 2017).

21. Pursuant to paragraph 1 of Article 1.1 of the CCP, the aim of the criminal proceedings is the speedy and complete clearance of crimes, identification of offenders, fair imposition of respective convictions to each individual who committed the crimes, and ensuring the fact that any innocent person shall be presumed not guilty, to protect human rights and legal interests and to restore the violated rights. Furthermore, paragraph 1 of Article 1.15 of the law states that "No one or legal entity shall be presumed guilty of committing a crime until a judgement of a court is issued. Paragraph 2 states "If there is a doubt in guilt of a suspect, accused or defendant, or interpretation or application of the Criminal Code and this Law even though all evidence relevant to the case were considered, these shall be settled in favour of the suspect, accused, defendant or convicted." Article 7.4, Paragraph 2 of the Law states "A defendant shall not be obliged to testify against him/herself, as well as to prove his/her innocence or any other circumstances of the case known to him/her" and Article 34.1 of the CCP "In the event of a crime committed by a defendant at trial the guilty person shall be liable for criminal liability specified in the Criminal Code, and shall decide on the acquittal if it is innocent".

22. The prohibition of torture and ill-treatment are reflected in CCP, Article 1.9, paragraph 1, "Participants in Criminal Proceedings shall prohibit torture, inhuman or degrading treatment or punishment", "It is prohibited to coerce a suspect, accused, defendant, victim and witness to give a testimony, or to subject him/her to inhuman or cruel treatment, or to insult his/her dignity." As referred to in paragraph 3 of Article 7.4 of the Law "it is prohibited to force the accused to give testimony against him/herself. "Article 16.12 of the "In case of enforcement of torture and other cruel, inhuman or degrading treatment or punishment during interrogation, the testimony shall not serve as evidence." Article 45.2, paragraph 2.4 of the same law states that "the right to compensation shall be borne in the case that the accused was subject to torture".

23. In Article 45.2, paragraph 4 of the CCP states "In the case of a detained person is ill-treated by investigator, a competent official, a procurator and a judge who has been shall be liable." Based on it, Article 82.1.2 of the Law on Police Service incorporated a section sets out in the case where "an act of intentional offense has been proved and the court judgement of a court is issued" he/she will be relieved from duties.

24. In addition, Article 22.4 of the Law on Police Service states that "it is forbidden for police officers to torture, inhuman or degrading treatment or punishment", Article 69.1.12 of this Law also prohibits police officer to "torture a person to get information or explanation on a crime or offence or justify such actions. In case of violation of this article, the types of penalties provided in Article 84.4 of this Law shall be imposed. For example, reducing posts, reducing police rank, and suspending from the police service for one year.

(c) Ensure that all interrogation rooms in detention centres around Mongolia, to be equipped with audio and video equipment; review videotapes to detect and investigate torture and other standard breaches. Also, these tapes shall be available to defendants and their legal counsels, provide the recording no cost to defendants, and they may be use it as evidence in court

25. The followings are the main regulations on interrogation rooms with audio and video equipment. Article 25.1, paragraph 2 of the CCP states that "Investigator shall conduct interrogation in a room specifically dedicated for interrogation", and paragraph 17 of the same Article specifies that "The requirements for a room specifically dedicated for interrogation mentioned in paragraph 2 shall be approved by the State General Prosecutor". In accordance with latter paragraph, the State General Prosecutor adopted the Decree A/57 on Requirements for a room specifically dedicated for interrogation dated on June 27, 2017. Within the requirements, the authorities responsible for the investigation may equip a room specifically dedicated for interrogation with control system for the audio recording, video recording, and audio-video recording equipment. In order to implement the legal requirements, the Law of Mongolia on Amendments to the 2017 State Budget is adopted, and a budget of 650.3 million tug rugs[1] is approved. Generally, 168 rooms of police departments all over the country are listed and licensed to become specifically dedicated for interrogation, and more 25 rooms have been checked to be licensed. Rooms at 82 central and local police offices were furnished per 7.930 million tug rugs. Equipment of the 82 rooms is fully completed.

26. The purpose of the video recording is regulated under the Article 28.2, paragraph 3 of the CCP that says "Investigator shall notify about audio-video recording before the commencement of the process and present to the person who involved in the process purpose for which the recording shall be used". If there is required to examine the results of the investigative actions in order to detect/reveal or investigate the cases related to torture and other violations of standards, the Article 35.20 of the mentioned law shall be governed. Paragraph 1 of this article says "Examination of the results of the investigative actions referred in the law shall be verified by overhauling the minutes of the process, the audio tapes, video tapes, or audio-video tapes, and interrogate the witnesses or the experts involved in the process". Paragraph 2 states that "Examination of the results of the investigative actions shall be limited to the information reflected in the minutes of the process, the audio recordings, video recordings, or audio-video recordings".

[1] Tug rug is the official currency of Mongolia.

27. According to the Article 11.7, paragraph 1 of the CCP specifies that "The court proceedings referred in this law shall be filed by the secretary of the court and confirmed by the audio recordings or audio-video recordings", regulation on availability of these tapes to defendants and their legal counsels is the Article 11.8, paragraph 5 "Under the request of the participants, audio recordings or audio-video recordings that confirms court proceedings shall be presented him/her".

28. After the completion of investigation, the case materials filed during the investigation proceedings shall be presented to the participants, especially to the defendant. Article 32.1, paragraph 4 of the CCP specifies "Investigator shall take a measure in order to provide request of the participants to be presented with audio recordings, video recordings or audio-video recordings referred in the documents of investigative actions of the case".

29. Regulation on use of above mentioned as evidence in court is reflected in Article 16.7 of the CCP that states "In situations where the circumstances described in records of investigations, of prosecution proceedings, and of court proceedings are inaccurate or varies with audio recordings, video recordings or audio-video recordings, the court and the prosecutor shall treat audio recordings, video recordings or audio-video recordings as evidence." Therefore, if it treated as important in the criminal case procedures, it is available to be used as the evidence in court.

(d) Provide the Committee with information on the outcome of the three complaints of torture being investigated by the Investigation Office of the General Police Department, as indicated in the additional information provided by the State party in July 2016

30. As of July 2016, the following three complaints have been investigated by the Investigation Department of the National Police Agency: 1) Complain by a citizen named P.BS dated on June 08, 2016; 2) Complain by a resident of Bayangol District of Ulaanbaatar dated on June 30, 2016; and 3) Complain by a detainee serves at #461 detention center of the General Executive Agency of Court Decisions.

31. A brief summary of G-112 complain made by P.BS on June 08, 2016 is about the fact that P.BS's brother P.BE was beaten and hit with electric truncheon by police officers. The complaint was received and reviewed by a detective of the Investigation Department of National Police Agency and made proposal not to initiate a criminal crime. Prosecutor's office received the proposal on June 28, 2016 and reviewed the proposal and case materials, documentary evidences, expert conclusion and observation by forensic medicine. Prosecutor's decree states that no grounds for initiating a criminal crime is existing.

32. Complain with registration G-128 against a police officer is submitted by G.G on June 30, 2016. B.E has been investigated under the complaint H-1-xxxx during that period of time when the police officer accompanied with other officers verbally insulted him and asked to give oneself up for committing crime, after a while kept him in another room, beat and injured lightly. The complaint was received and reviewed by a detective of the Investigation Department of National Police Agency and it transferred to Khan-Uul district's Prosecutor office because of case jurisdiction. From July 19, 2016 a police officer provided an investigation in order to initiate a crime case. However, at the end of the process, he made a proposal to terminate the case and sent it to prosecutor's review on November 05, 2016. Prosecutor's office reviewed the proposal and case materials, such as testimonies of witnesses, documentary evidences. The fact B.E's light injury because of beat by a police officer is not confirmed, therefore, according to the Article 24, paragraph 24.1.1 and Article 208, paragraph 208.1.1, prosecutor's decree justified the proposal not to initiate the criminal case.

33. A brief summary of complaint G-142 made by a detainee who serves at #461 detention center of the General Executive Agency of Court Decisions is about a beat by an investigator who forced a man to get acquainted with materials related to the case. The investigation was provided, made a proposal to initiate the criminal case and sent the proposal to the Prosecutor's Office of Bayangol district on August 15, 2016. Prosecutor's Office received it and reviewed the materials collected during the investigation process under the complaint and found that there are no grounds for initiating criminal case. The

resolution of proposal submitted by the investigator is not to initiate criminal case since there are no statements clearly determine the crime. Therefore, prosecutor's decree was issued on August 24, 2016 refusing to initiate criminal case on complain G-142.